1975

State of Utah and Joann Lorraine Clark v. Mark Thomas Clark et al : Brief of Appellant

Utah Supreme Court

Martin W. Gusten; Weber County Legal Aid Services; Attorney for Respondents;
Vernon B. Romney; Frank V. Nelson; Attorneys for Appellants;

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH and JOANN LORRAINE CLARK,
Plaintiff and Appellant,
-vs-
MARK THOMAS CLARK,
Defendant and Respondent.
and
STATE OF UTAH and SHARON O. BOWEN,
Plaintiff and Appellant,
-vs-
KIM P. BOWEN,
Defendant and Respondent.
and
STATE OF UTAH and MARY O. VIGIL,
Plaintiff and Appellant,
-vs-
ALFONSO M. VIGIL,
Defendant and Respondent.

CIVIL
14132, #

BRIEF OF APPELLANTS

Appeal from the District Court
Utah, the Honorable Calvin Gould, pres

VERNON
Attor

FRANK
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Ad

23
Salt

Attor

IN CUSTEN, ESQ.
24th Street
, Utah
ney for Respondents

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VERNON B. ROMNEY
Attorney General

FRANK V. NELSON
STEPHEN G. SCHWENDIMAN
Assistant Attorneys General

236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Appellants

MARTIN CUSTEN, ESQ.
453 - 24th Street
Ogden, Utah
Attorney for Respondents

TABLE OF CONTENTS

CASES CITED

STATUTES

OTHER AUTHORITIES CITED

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BRIEF OF APPELLANTS

STATEMENT OF THE NATURE OF THE CASE

The Plaintiff-Appellants, State of Utah, and

Mary O. Vigil, Joann Lorraine Clark, and Sharon O. Bowen, appeal from memorandum decisions entered in the District Court of Weber County, State of Utah granting summary judgment of dismissal of the complaints under U.C.A. 78-45-1 et.seq.

DISPOSITION IN THE LOWER COURT

The Appellants brought separate actions in the District Court of Weber County, the Honorable Calvin Gould, presiding, for reimbursement of funds expended for public assistance, under Utah Code Annotated § 78-45-9 (1953) as amended. All three cases were heard together on a motion for summary judgment by the defendants, on April 30, 1975.

Arguments of counsel for both plaintiffs and defendants were presented and defendants' motion for summary judgment was granted. The court issued identical memorandum decisions in each of the three cases, holding that plaintiffs could not recover reimbursement under U.C.A. 78-45-9, as amended, and would not be entitled to a judgment for a sum certain without first obtaining a court order specifying the amount of monthly support.

RELIEF SOUGHT ON APPEAL

Appellants seek reversal of the memorandum decisions and petition the Court to vacate the orders granting summary

judgment with instructions to re-hear the cases under U.C.A. 78-45-9, consistent with the directive of this court in the matter.

STATEMENT OF FACTS

The facts are substantially the same in all three cases, and are not in dispute. In each case, the defendant-obligor abandoned his family, leaving them without support and dependant upon the State of Utah to provide assistance. There was no divorce or separate maintenance order decreed by the court in any of the three cases. There has never been any child support or sum certain of support ordered by any court to be paid by the respondents, nor have any of the respondents paid any. Thus, the appellants were forced to seek and receive assistance for their families from the Utah State Department of Social Services.

In the Bowen case, for instance, Plaintiff Sharon O. Bowen received assistance from November 1972 through February 1973, receiving a total of $616.00. Under U.C.A. 78-45-9, as amended, the State of Utah is granted derivative rights to seek reimbursement from obligors who fail to support their obligees and thereby force the State to assume the burden. Therefore, the State of Utah sought reimbursement of a sum certain of $616.00 from defendant-obligor, Kim R. Bowen; the same basis exists for the other two cases as well.

Judge Gould of the Weber County District Court ruled that such reimbursement cannot be enforced for a sum certain without a prior court order specifying the amount of monthly support. From this decision, the Appellants appeal the decision of the District Court.

ARGUMENT

POINT I

A FATHER IN THE STATE OF UTAH HAS A DUTY OF SUPPORT TO CHILDREN, INDEPENDENT OF ANY COURT ORDER OF A SUM CERTAIN.

In the State of Utah, father has a duty to support his children, independent of any court order. Such is imposed by both state statute and common law. Utah has codified what the Utah Supreme Court has declared for years: Every man shall support his wife and child. Defendants-obligors are not excused from this responsibility and obligation merely because they have not previously been ordered by a court to pay a certain amount.

A father's obligation to support his children is established by Utah Code Annotated 78-45-3(1953 as amended) which provides:

> "DUTY OF MAN (78-45-3) Every Man shall support his wife and his child."

The Utah Supreme Court in Ottley v. Hill 446 P.2d 301, 302, said in reference to this statute:

> "It was the duty of the plaintiff to support his son, if he is able to do so, and that duty is imposed by statute in this state."

Further, under the common law of this state, the duty of support is likewise well established. Rees v. Archibald 6 Utah 2d 264, 311 P.2d 788 (1957) states as follows:

> "This court has invariably emphasized the father's obligation to support his children based upon the elementary principle that the law imposes upon those who bring children into the world the duty to care for and support them during their minority and dependency."

These specific requirements of support are not only of long time standing, but the legislature of the State of Utah has found it advantageous to spell out this responsibility in other areas. Utah Code Annotated 30-2-9 states as follows:

> "Family Expenses...:
>
> "The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or of either of them and in relation thereto they may be sued jointly or separately."

Utah's sister states have likewise established appellants position that the father has the duty on continuing support. Alaska quoted Utah's Rees v. Archibald in Hougar v. Hougar 449 P.2d 766 (1969) where in the court said:

> "A father has the primary and continuing obligation to support his children."

Colorado has held in McQuade v. McQuade 358 P.2d 470 Colo. (1960) that:

> "Both the common law and Colorado case law establish that the primary obligation for the support of a minor child lies upon its father."

POINT II

THE DUTY OF SUPPORT IS ENFORCEABLE INDEPENDENT OF ANY COURT ORDER OR DECREE FOR A SUM CERTAIN.

Utah Code Annotated, Section 78-45-3, supra, provides a statutory duty of support for fathers. There is no need to establish that duty of support again by court order before the duty can be enforced. Further, Utah Code Annotated Section 77-61a-2(f) (as amended 1973) is a definition of "Duty of support" and says:

> "Duty of support includes any duty of support imposed or imposable by law, or by any court order, decree, or judgment..." (Emphasis added)

This duty of support may be imposed upon fathers in Utah then either by law or by court order. There is no requirement, however, of the latter being present before the former duty is enforceable. Either one is sufficient, independent of the other, to establish an enforceable duty of support.

Already referred to is Utah Code Annotated 78-45-9 authorizing enforcement of the obligor's duty. It states:

> "The obligee may enforce his right of support against the obligor and the state department of public welfare may proceed on behalf of the obligee to enforce his right of support against the obligor..." (Emphasis added)

Section 9 makes no mention whatsoever of a support order,

and this is because the very purpose of 78-45-3, supra, is to establish an enforceable statutory duty of support. This then obviates the necessity of going to court to get an order before an obligee is able to enforce a right of support in Utah.

This rationale is supported by Commissioners' statements about the purpose of the Uniform Civil Liability for Support Act, of which 78-45-3 and 9 are part; and also by William Brockelbank in his now famous treatise, Interstate Enforcement of Family Support, 2nd Edition. In the Commissioners' Prefatory Note to the Uniform Civil Liability for Support Act, they enunciate as a basic purpose of the act the establishment of a statutory duty of support to be used in conjunction with URESA. (U.C.A. Matr., Fam. and Health Laws 133). The famous act was passed to eliminate confusion among lawyers who believed URESA was unenforceable without a court order declaring a duty of support. Commenting on this, Brockelbank said:

> ". . . /I/t is suprising to find /such/ misconceptions. One such is that only orders of support of one state will be enforced in another under the Act. In fact it is 'all duties,' and the duty, of course, may grow out of the order of support or a judgment or decree but is equally a duty if it never has received judicial attention and now is the basis of litigation for the first time under the Act." (Emphasis added)

Brockelbank and Infansto, Interstate Enforcement of Family

Support, 2nd ed., 1971, p. 39. These "all duties" spoken of by Brockelbank encompass not only court orders of support, but statutory (such as 78-45-3) and common law duties of support as well.

Thus, Utah Code Annotated 78-45-3 establishes a statutory right of support for children from their fathers, and 78-45-9 Utah Code Annotated (1957) gives the obligee the right to enforce this duty of support. Read together, there is no need to establish again by court order a duty of support before such duty can be enforced.

California, with a support statute similar to Utah's law, in Los Angeles County v. Frisbie 122 P.2d 526, 1a Cal. 2d 634:

> "As so employed, these words, referable to the recoupment of sums already paid, indicate the legislature's intention by this enactment to provide the county with authority to prosecute an ordinary cause of action for the recovery of money and negative the requirement of a judicial decree to determine the measure of the debt as the maintenance of such action." (Emphasis added)

The language of the court is too clear to be mistaken: when the support obligation is established by statute, there is no need to go into to court and get a court order prior to an action for reimbursement based on the statute.

Cases from nearly all jurisdictions across the United States are too numerous to recite. Lengthy annotations and many cases

support what Utah has already declared in Rees v. Archibald, supra, and that is that the father has an absolute duty to care for his family.

POINT III

THE STATE OF UTAH ACTING AS A THIRD PARTY PROVIDING SUPPORT ASSISTANCE TO A FATHER'S MINOR CHILDREN, HAS A RIGHT OF REIMBURSEMENT AGAINST THE FATHER.

The State of Utah, in order to establish a statutory duty of support, has adopted the Uniform Civil Liability for Support Act, U.C.A. 78-45-1 et seq. of which Section 9 provides for the enforcement of the rights of support created by the act, and also provides a right of action for the state to secure reimbursement for any support rendered to an obligee owed by an obligor.

> §78-45-9 states: "Enforcement of right to support--Powers of state department of public welfare. --The obligee may enforce his right of support against the obligor and the state department of public welfare may proceed on behalf of the obligee to enforce his right of support against the obligor. Whenever the state department of public welfare furnishes support to an obligee, it has the same right as the obligee to whom the support was furnished, for the purpose of securing reimbursement and of obtaining continuing support. Whenever such action is commenced by the state department of public welfare, it shall be the duty of the county attorney, of the county of residence of the obligee, to represent the state department of public welfare."(emphasis added)

The statute defines "obligor","obligee", and "state" as:

§78-45-2. Definitions.--As used in this act:

(1) "State" includes any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(2) "Obligor" means any person owing a duty of support.

(3) "Obligee" means any person to whom a duty of support is owed.

Furthermore, the act imposes by law a duty of support upon fathers in the State of Utah making them as such an obligor, ie. a person owing a duty of support. (See Utah Code Annotated 78-45-3 cited earlier.)

Therefore, whenever a father in the State of Utah fails to provide necessary support for his children, as is his statutory duty and obligation, and the state has to step in and pay welfare to the family, then the state has a right of action subrogated to it by §78-45-9 to seek reimbursement.

Although the exact meaning and interpretation of §78-45-9 has never been litigated in Utah, it has been the subject of judicial interpretation in our sister state of California. The Uniform Civil Liability for Support Act, of which U.C.A. 78-45-9 is

a part, has been adopted by four states: Utah, California, New Hampshire, and Maine.

California's interpretation came in County of Santa Clara v. Doll, 337 P.2d 582, in which a county was suing a father for reimbursement for support the county had rendered his illegitimate son when the man failed to do so. The court says in part:

> "It is the plaintiff's argument that the minor child Charles has the right to challenge his own presumed legitimacy and that being true, the county under the provisions of Civil Code, section 248, supra, may proceed on behalf of Charles to enforce his right of support; that is, the county, has the same right as Charles to secure reimbursement and continuing support and that the county therefore succeeds to this right of Charles. But this is a nonsequitur."
>
> "The plaintiff's argument would be valid were there no question of illegitimacy involved. That is, were this a simple case where the father, about whose identity and fatherhood there is no dispute, failed or refused to support his minor child, then, under the provisions of section 248 the county could enforce the child's right to receive such support." (emphasis added)

Here the court disallowed the recovery because of the unsettled illegitimacy issue; however, the court's language is clear that in a proper case, the statute would allow reimbursement.

In New Hampshire the comparable statute was again the subject of litigation in Langevin v. Hillsborough County, 320 A. 2d 635.

The Supreme Court held that where the county had expended funds for care of neglected or dependent children, the county was entitled to reimbursement from the children's father. The Court said:

> "It is clear that the aid which the county provided to plaintiff William's children gave it a right of action to recover for such support against their father who was chargeable therefor either as support granted to dependent children or to neglected children."

From the previous cases it is clear that the statute (U.C.A. §78-45-9) provides for and the various state courts have interpreted it to mean that a state has a right of reimbursement from the obligor anytime it renders support to an obligee.

Even if it were not for the statutory right found in Utah Code Annotated §78-45-9, the state would have a right of third party reimbursement as a matter of common law. Although not all familial relationships owe each other a duty of support in the common law, it is abundantly clear that when a father fails to provide the necessaries to his child, the parent may, in a proper case, be held liable for necessaries furnished to the child by a third person.

> "It is a necessary consequence of the duty to support the child that the parent may, in a proper case, and sometimes as a result of express statutory provision, be held liable for necessaries furnished to the child by a third person, whether they are procured by the child or by the mother; and the mother has the same right as a stranger to recover from the father for necessaries furnished by her to the child, in the absence of any equitable reason

for imposing on her the father's primary obligation to support the child." 67 CJS §16 P. 698

The rule of law allowing for third party reimbursement for support rendered to minor children has been clearly established in the common law of Utah. The leading case is Rees v. Archibald, supra. In that case the court held, notwithstanding a divorce decree, and even in the absence of a support order, that the father was liable for the expenses of necessaries furnished to his son by another. Justice Crockett's language is clear:

> "The law is well settled that a father is liable, even in the absence of express contract, to a third person furnishing necessities to his child."

The law established by Rees, id, in Utah was followed and explicated plainly in the recent case of Baggs v. Anderson, __Ut. 2d ____, 528 P.2d 141(1974). There, the Supreme Court of Utah held that a third party's right to reimbursement for support supplied to a child from the failure of the parent to furnish support, belongs to whoever furnishes the support. The court said, as enunciated by Justice Crockett:

> "/I/t is appropriate to point out that support money can fall into two separate categories: First, the current and ongoing right of a child to receive support money from his father (parent); and second, the right to receive reimbursement for support of a child after that has been done."

As to the first, the court indirectly made mention to it later in the opinion, saying:

"For example, suppose an improvident or profligate mother (or father)...deserted the child, the child would still have a right to support from his father (parent); and the latter cannot divest himself of that obligation, nor defeat the child's right to support."

and

"As to the second, suppose a father (parent) fails over a period of time to furnish support of the child, and the mother, or someone else, furnishes it. That person then has the right to claim reimbursement from the parent, the same as any other past debt. This right of reimbursement belongs to whoever furnished the support; and it is subject to negotiation, settlement, satisfaction or discharge in the same manner as any other debt. (Emphasis added) at P. 143.

The language could not be any clearer: there exists in Utah as a matter of common law a right for the state of Utah to seek reimbursement from a father for support rendered to his child when he has failed in his duty to furnish it himself.

The Supreme Court of Arizona best summarizes the position taken not only by our sister states, but most jurisdictions in the United States. In Watkins v. Medical and Dental Finance Bureau, Inc., 422 P.2d 696, 697, 698 (Ariz. 1967.) The Court said:

"We agree that under certain circumstances a promise by a parent to pay for necessaries furnished his minor child by another may be implied if the parent has neglected to furnish the necessaries himself. Charbonneau v. Norton, 263 Ill. App. 341; Hard v. Gilbert, 205 Wis. 557, 238 N.W. 371; Kriedo v. Kriedo, 159 Md. 229, 150A.720; Thompson v. Perr, 238 S.W. 2d22(Mo. App.). Such an implied promise may arise from the recognized duty that a parent has to support his or her child. Barrett v. Barrett, 44 Ariz. 509, 39 P.2d 621.

"The 'implied promisefor necessaries' doctrine was not formulated for the purpose of aiding enterprising third parties, but rather is a policy law meant to impel neglectful parents to assume responsibility for their children's welfare."

Thus, the common law of the state of Utah, as well as other states, provides a remedy for reimbursement of third parties who have rendered support to children, upon the failure of the natural parents to fulfill their legal duty to do so.

There also remains a strong public policy argument in favor of allowing the state to recover support monies expended for needy children. It is reasonably plain from the course of the legislation described (78-45-1 et.seq.) that it was the purpose of the Legislature to provide assistance for children in need of support, and to establish procedures by which their needs might be met at public expense as they arose, with subsequent reimbursement from parents capable of furnishing support. To allow an obligcr to claim he is under no duty to reimburse the state would not only defeat the purpose of the legislature, but it would put an onerous burden upon the taxpayers of Utah by denying recovery of millions of tax dollars expended by the state for the support of children of parents who refuse to support their offspring themselves.

Thus, by <u>any</u> standard; statutory, common law, or public policy, the state of Utah has a right to recover, as a third party

any monies expended for support of needy children from the obligor owing the duty of support.

POINT IV

THE AMOUNT OF REIMBURSEMENT DUE THE STATE IS EQUAL TO WHATEVER SUM IT PROVIDED FOR SUPPORT OF THE CHILDREN, IN THE ABSENCE OF A COURT ORDER.

Under Utah Code Annotated 78-45-9 as quoted earlier, the state can enforce two separate rights of support. The first is the right to reimbursement for funds expended, and the second is the right of securing continuing support from the father of neglected children. The standard for securing the latter is provided for by statute, U.C.A. §78-45-7, which enumerates seven criteria for determining support. This statute, however, apparently applies only to prospective support. As to the former, the legislature must have assumed the commonly accepted meaning of "reimbursement" was so clear that there could be no dispute as to it. Perhaps they were right, as there has been no case law in Utah interpreting the meaning of the word "reimbursement" in §78-45-9.

Fortunately, however, our sister state of California has litigated the point in dealing with the support statute very similar to our own. In the case of Los Angeles County v. Frisbie, supra, the court was called upon to determine the meaning of the word "reimbursement" within the context of the California welfare

statute. The California Supreme Court said:

> "Preliminary to our consideration of the questions raised by the parties relative to the meaning of the particular language employed in these code provisions, it is pertinent to observe that the object of all construction of statutes is to ascertain and give effect to the intention of the legislature...The primary and ordinary meaning of the word 'reimburse' is 'to pay back, to make restoration, to repay that expended.' Webester's New International Dictionary, Second Edition; Funk & Wagnall's Standard Dictionary. The actual amount due depends upon the sums determined by the board of supervisors to be representative of the county's expense for the relief granted." (Emphasis added)

Here the court defined "reimbursement" as "to repay that expended," and further indicated the actual amount to be reimbursed was that sum which the county actually expended. Thus, even where a court order has not been previously entered as to a particular sum certain due for support, the amount due for reimbursement under U.C.A. §78-45-9 can quickly and simply be ascertained by determining the amount the state has expended for child support. The former is equal to the latter.

In Langevin cited earlier, the New Hampshire Supreme Court affirmed the findings of the trial court as to the amount of reimbursement due:

> ".../T/he County is entitled to reimbursement from William Langevin relative to sums expended by the County for care of William Langevin's children."

Thus, the court found the amount of reimbursement due was equal to the sum expended by the county.

The Utah Supreme Court held in Anderson v. Anderson 110

Utah 300, 177 P.2d 132 (1946) that where the defendant had failed to pay some past support money:

> "We see no reason why the court could not likewise require him to pay a sum equal to the installments which had been unpaid." at 307.

By simply extending the court's reasoning to the instant set of facts, we see no reason why the court could not likewise require a defendant to pay a sum equal to the installments which had been paid by the state.

It is therefore clear, by statute and the common law, that when the amount of reimbursement sought has not been previously determined by a court ordered sum certain, then the amount of reimbursement is simply equal to the amount expended by the third party for support of the children.

CONCLUSION

The real issue in these cases can be summarized as whether or not the State of Utah can seek reimbursement from obligors under U.C.A. 78-45-9, for assistance rendered to obligees, without a court ordered sum certain duty of support. Appellants urge that the very purpose of the Uniform Civil Liability for Support Act, 78-45-1 et. seq., of which 78-45-9 is a part, is to statutorily impose that very duty, and thereby negative the requirement of getting that duty declared by court order and having a sum certain set.

Appellants further urge that reliance on the District Courts' construction and rationale of §78 -45-9 emasculates the law and negates the purpose for which the legislature passed the law.

To say no amount of reimbursement is allowable simply because no sum certain has been previously ordered by the court, where there is a sum certain paid by the state, on behalf of Respondents' minor children, is to torture a simple issue.

The equitable answer is that the amount of reimbursement due is equal to the amount the state paid out in assistance.

Aside from the legal arguments, so strongly in favor of appellants' position, the public policy arguments are overwhelming in favor of appellants position. It is unconscionable to force the taxpayers of Utah to carry any greater tax burden than is necessary, to support defendant-obligors' children when the law of Utah provides a remedy against them.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General

FRANK V. NELSON
Assistant Attorney General

STEPHEN G. SCHWENDIMAN
Assistant Attorney General

Attorneys for Appellant